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LOK SABHA

The following Report of the Select Committee on the Bill to provide for the levy of gift-tax, was presented to Lok Sabha on the 2nd May, 1958:—

COMPOSITION OF THE SELECT COMMITTEE

1. Shri C. R. Pattabhi Raman—*Chairman.*
2. Shri Asoke K. Sen
3. Shri C. D. Pande
4. Shri M. Thirumala Rao
5. Shri Tribhuvan Narayan Singh
6. Shri Mahavir Tyagi
7. Shri S. Ahmad Mehdi
8. Shrimati Uma Nehru
9. Shri Shivram Rango Rane
10. Sardar Iqbal Singh

*11. Dr. Y. S. Parmar

12. Shrimati Renuka Ray
13. Shri Liladhar Kotoki
14. Shri Jaganatha Rao
15. Shri Narendrabhai Nathwani

*Ceased to be member of the Committee with effect from the 28th April, 1958, on his election to the Lok Sabha being declared void by the Election Tribunal.

16. Shri Radheshyam Ramkumar Morarka
17. Shri Harish Chandra Mathur
18. Shri Radhelal Vyas
19. Shri Vidya Charan Shukla
20. Shri N. G. Ranga
21. Shri M. Shankaraiya
22. Shri Satyendra Narayan Sinha
23. Shri George Thomas Kottukapally
24. Shri A. M. Tariq
25. Shri Kamalnayan Jamnalal Bajaj
26. Shri B. R. Bhagat
27. Shri Mathura Prasad Mishra
28. Shri T. Sanganna
29. Shri S. R. Damani
30. Shri Rajeshwar Patel
31. Shri T. C. N. Menon
32. Shri Prabhat Kar
33. Shri R. K. Khadilkar
34. Shri Bimal Comar Ghose
35. Shri Arjun Singh Bhadauria
36. Shri M. R. Masani
37. H. H. Maharaja Sri Karni Singhji of Bikaner
38. Shri Premji R. Assar
39. Shri N. Siva Raj
40. H. H. Maharaja Pratap Keshari Deo
41. Shri Naushir Bharucha
42. Dr. A. Krishnaswami
43. Shri Morarji Desai.

DRAFTSMAN

Shri G. R. Rajagopaul, *Additional Secretary and Chief Draftsman, Ministry of Law.*

SECRETARIAT

Shri N. N. Mallya—*Deputy Secretary.*

Shri A. L. Rai—*Under Secretary.*

Report of the Select Committee

I, the Chairman of the Select Committee to which the *Bill to provide for the levy of gift-tax was referred, having been authorised to submit the report on their behalf, present this their Report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 28th February, 1958. The motion for reference of the Bill to a Select Committee was moved by Shri Morarji Desai on the 23rd April, 1958. It was discussed in the House on the 23rd and 24th April, and adopted on the 24th April, 1958.

3. The Committee held 6 sittings in all

4. The first sitting of the Committee was held on the 26th April, 1958 to draw up a programme of work.

5. Seven memoranda on the Bill were received by the Committee from different associations/individuals.

6. The Committee considered the Bill clause by clause at their sittings held on the 28th, 29th, 30th April, and 1st May, 1958.

7. The Report of the Committee was to be presented by, the 1st May, 1958. The Committee were granted extension of time on 1st May, 1958 upto the 2nd May, 1958.

8. The Committee considered and adopted the Report on the 2nd May, 1958.

9. The observations of the Committee with regard to principal changes proposed in the Bill are detailed in succeeding paragraphs.

10. *Clause* 2.—(1) *Item* (*iii*).—The definition of assessee has been brought in line with the definition in the Income-tax Act.

(2) *Item* (*xii*).—The meaning of the word "consideration" in this definition has been made clear by the insertion of the words "in money or money's worth"

(3) *Item* (*xviii*).—The Committee feel that the definition of 'person' should also cover association of persons.

The item has been amended accordingly.

*Published in Part II, Section 2 of the Gazette of India, Extraordinary, dated the 28th February, 1958.

(4) *Item* (*xx*).—The Committee feel that the definition of "previous year" should cover all cases of gifts made during a period of 12 months prior to the assessment year including the gifts made by persons in whose case there is no previous year under the Income-tax Act.

The item has been amended accordingly.

(5) *Item* (*xxi*).—The amendment brings the expression Secretary and Treasurer in line with the Companies Act, 1956.

11. *Clause* 3.—The Committee feel that it should be specifically provided that gifts made before the 1st April, 1957 should not come within the purview of the Bill. They also feel that there should be no aggregation of gifts made during the five preceding years for the purpose of determining the rate of duty. The tax should be levied on gifts made during the previous year at the rates specified in the schedule.

Explanation to clause 3 would cause hardship and should be omitted.

The clause has been amended accordingly.

12. *Clause* 4.—(1) *Item* (a).—The amendment is of a formal nature.

(2) *Item* (*b*).—The words "in the opinion of the Gift-tax Officer" have been omitted as unnecessary. The other amendment made in this item is of a clarificatory nature.

(3) *Item* (*c*).—The Committee feel that debts, contracts, actionable claims or interests in property which are written off, compounded or remitted, *bona fide* should not be treated as gifts.

The item has been redrafted accordingly.

(4) *Item* (*d*).—It has been made clear that this item applies only when the vesting of property is "without adequate consideration". The other amendments make it clear that an appropriation from a joint property for the benefit of a third party will also be a gift.

13. *Clause* 5.—In the opinion of the Committee:—

(i) Item (*ii*) (*a*) of Clause 5(1) should be amended to make it clear that no citizen of India is charged tax in respect of gifts of movable property made outside India unless he is regarded as resident and ordinarily resident within India within the meaning of the Income-tax Act.

(ii) Item (*vi*) should be amended so as not to subject gifts for charitable purposes made before 1st April, 1958 to tax and further in respect of such gifts made after that date the aggregate value of gifts made to one donee should not exceed rupees five hundred.

Recommendation of the President under Article 117(1) of the Constitution has been obtained for making the amendment.

(iii) Item (*vii*) should be amended so that the conditions apply uniformly to individuals and to Hindu undivided families and the provision applies to both male and female relations.

(iv) Item (*viii*) should apply equally to the husband and wife, but if out of the gift so made the donee makes further gifts, those gifts should be taxable. This has been done by inserting a new sub-clause (*3*).

Recommendation of the President under Article 117(1) of the Constitution has been obtained for making the amendment.

(v) Item (*ix*) should be amended so as to exclude the wife from its scope, in view of the provision included in item (*viii*).

Recommendation of the President under article 117(1) of the Constitution has been obtained for making the amendment.

(vi) Sub-clause (*1*) should be further amended so as to include within its scope gifts for the education of one's children, gifts by way of bonus etc., gifts made in the course of business, gifts to *Bhoodan* or *Sampattidan* movement and gifts made out of privy purses which custom demands should be made.

(vii) Sub-clause (*2*) should be amended to allow a basic exemption of rupees ten thousand, irrespective of the value of the number of gifts to an individual donee.

Clause 5 has been amended suitably to provide for the above matters.

14. *Clause* 6.—The amendment is of a clarificatory nature.

15. (*Original Clause* 7).—This clause has been omitted for the reasons mentioned against Clause 3.

16. *Clause* 16 (*Original Clause* 17).—The amendment made is of a clarificatory nature.

17. *Clause* 18 (*Original Clause* 19).—The amendment ensures the same advantages to persons who have made gifts before the passing of the Act as are available to persons who make gifts hereafter.

18. *Clause* 21 (*Original Clause* 22).—The clause has been amended to bring it in line with section 44 of the Income-tax Act as amended by Section 11 of the Finance Act, 1958.

19. *Clause* 23 (*Original Clause* 24).—The Committee feel that an assessee should have an opportunity for appeal against the order of Appellate Assistant Commissioner and Commissioner imposing a penalty under Clause 17.

The Clause has been amended accordingly.

20. *Clause* 35 (*Original Clause* 36).—The amendment made in sub-clause (*i*) secures uniformity with the language of sub-clause (*1*).

21. *Clause* 45 (*Original Clause* 46).—In the opinion of the Committee no distinction need be made between public companies and private companies for the purpose of exemption, but in either case the exemptions should not apply to gifts made to directors, managing agents, etc., or to their relatives.

Charitable and other institutions whose income is exempt from income-tax should not be subjected to gift-tax in respect of gifts made by them.

Accordingly after obtaining the recommendation of the President under article 117(1) of the Constitution the Clause has been amended suitably.

22. *Clause* 46 (*Original Clause* 47).—The amendment made in this Clause seeks to enumerate the subject matter in respect of which rule for refund of gift tax may be made.

23. The Select Committee recommend that the Bill as amended be passed.

C. R. PATTABHI RAMAN,
Chairman,
Select Committee

NEW DELHI;
The 2nd May, 1958.

MINUTES OF DISSENT

I

India has a fine tradition of compassion and charity. On the other hand, for many centuries now, there has been a deficiency in the capacity of our people to get together in small groups in order to establish voluntary institutions and organisations for the furtherance of public purposes or objectives shared by them. There can be little controversy about the proposition that the tradition of charity and of sharing one's material wealth needs to be protected while the instinct for self-help and "grass roots" action for the solution of social, economic and political problems needs to be stimulated. Unfortunately, the Gift Tax Bill as it emerges from Select Committee appears to me to be only too likely to have just the opposite effect.

The original purpose of the Bill, when it was first announced last year by the present Finance Minister's predecessor, Mr. T. T. Krishnamachari was stated to be that of checking attempts at evasion or reduction of tax liability to Estate Duty and other taxes through the levying of a tax on such gifts as might provide a convenient means of such evasion. Even in the brief Statement of Objects and Reasons of this Bill dated February 28, 1958, considerable prominence is given to this purpose, though other objects already begin to find a place there. A perusal of the Bill itself, however, reveals that the primary purpose has been left far behind and that its main feature is to tax gifts for the sake of taxing them, as if there is something slightly reprehensible about the act of giving except within limits set by the State. The citizens' freedom of choice is thus crippled in yet one more sphere of life.

A good illustration of this attitude is to be found in Clause 5, Sub-clauses (v) and (vi) of the Bill. Barring trifling gifts of less than Rs. 100, the benefits of exemption from Gift Tax is given only to those institutions or funds established for a charitable purpose to which the provisions of Section 15B of the Income Tax Act apply. This limitation excludes donations of two kinds which, in my view, are deserving of encouragement.

On the one hand, donations to public institutions and for public purposes which are not strictly charitable in character are henceforth to be mulcted by the imposition of a Gift Tax. Among these

would be contributions of such a diverse nature as those to flower shows, sports and games, literary societies, ideological causes such as, for instance, population control, or the abolition of capital punishment, and finally to political parties or organizations.

In India, it is difficult enough to get people to put their hands into their pockets and make contributions even towards purposes they otherwise hold dear. Democracy thrives while citizens who hold certain purposes or objectives in common get together for educating public opinion in regard to them or otherwise furthering them. Now, in addition to the existing disinclination, there will be the further disincentive of taxation.

In so far as charities are concerned, the limitations of Section 15B of the Income Tax will exclude from tax exemption donations made to charities which are for the benefit of members of "any particular religious community". Support for this distinction was sought to be convassed on the ground that our Constitution pledges us to a secular State. I must confess I find nothing in the Constitution to warrant such a proposition. Such a label is not warranted by anything in our Constitution which, on the contrary, guarantees freedom of worship and the practice of the religion of one's own choice. What is enjoined by our Constitution is a non-denominational State—which is something quite distinct from a secular State—one that respects equally all religions and gives equal facilities for their propagation and observance.

It is curious that while charities confined to members of a particular religious denomination are sought to be discouraged, there is no such attempt made in the Bill to discourage parochial charities or those that may be confined to denizens of one particular State or region. Are the barriers between people of different regions in this country really less obstructive to a common nationality and a sense of nationhood than barriers erected by religion? If not, why this discrimination?

I myself have always been allergic to communal or denominational charities but I see no reason why some of us who have such an attitude should seek to inflict it, on the large majority of our compatriots. It will surely not be denied that most citizens of India have not yet reached such a stage of national consciousness as to eschew donations to what may be described as sectional funds and institutions. The duty of those of us who feel that these divisive labels and barriers need to be eliminated is to educate public opinion by force of example and through patient persuasion. It is not right

that coercive powers of the law and the penalty of a tax should be brought into operation even for such a worthy purpose.

Different persons have different limits set to their charitable instincts. Some will share with members of the family or clan, others with members of the caste, yet others with co-religionists or denizens of their own village, town or region, and finally some with members of the entire nation or the world. Any attempt to bring pressure to bear in order to direct charities in one particular direction will only act as a deterrent to the exercise of compassion and charity itself, for people simply will not be dictated to in the matter of charity. Either the donor will be deterred by the tax from donating at all, or he will reduce the amount of his charity to make allowance for the tax he will have to pay. In either event, the sufferer will not be the citizen whom our ardent secularists consider misguided, but the poor recipients whose needs will be met just as well as whether the charity is a communal or national one.

If the State in India had the resources to operate a system of social security from the cradle to the grave as in more advanced countries, it might perhaps have some right to discourage others from helping the needy and poor. We, in India, unfortunately are not in such a position and will not be for many years to come. Have we any right to contribute towards the drying up of the springs of private compassion and charity when we are not in a position to replace their bounty? I fear that the damage done by the imposition of the Gift Tax on charities that do not conform to Section 15B of the Income Tax Act will far outweigh any good it may do as it will lose to the poor recipients of benefactions a vastly larger amount of money than the State coffers are likely to get in the form of Gift Tax on unapproved charities.

I endeavoured unsuccessfully to rectify these features of the Bill by suggesting the exemption from Gift Tax of donations made to any institutions or funds established for "any charitable, benevolent, religious, scientific, national, political or public object or purpose". Despite the responsive attitude of the Finance Minister to various suggestions made by members of the Committee and certain improvements in the Bill made in the Select Committee of which I am not unappreciative I therefore find myself constrained to append this minute of dissent.

M. R. MASANI.

NEW DELHI;
The 2nd May, 1958.

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II

As I differ with the majority of the members of the Select Committee on certain important matters, I am compelled to write this minute of dissent.

At the outset it may be noted that whatever the motive underlying the making of gifts, the net result of every gift is to reduce tax liability, particularly the Estate Duty, Income-Tax and Wealth Tax. A Gift Tax is therefore needed to eliminate the tax advantages of giving. The avowed object, therefore, if this bill is to tax gifts generally and the scope of the bill is not confined merely to plug loopholes in the other taxing statutes.

Clause 5(1) (*viii*):—In my opinion in taxing gifts generally, legitimate expectations in favour of family and society should not be disturbed. That is why in Clause (5), various exemptions, *inter alia*, in favour of the members of the family and the charity are made, besides providing for a very liberal exemption of Rs. 10,000 a year under Sub-clause (2). Yet, in my opinion, an exemption limit of Rs. 1 lac in favour of either spouse by the other under sub-clause (viii) appears to go far beyond such expectation. This exemption becomes still more glaring in view of the deletion by the Select Committee of the explanation to clause 3, in the original Bill. The provision now added for taxing gifts made by a donee out of the gift so made to him or her, cannot detract from the objection to making such a large exemption in favour of wife or husband. The limit of Rs. 1 lac should be substantially lowered, say to Rs. 25,000|-.

Clause (7):—But the more serious objection is against the deletion of the original clause (7), which provided for aggregating the value of all taxable gifts made by an assessee during the five years immediately preceeding the financial year. It is worth observing that the Gift Tax is protective, its main, though not sole, purpose is to strengthen the Estate Duty. Gifts made during life time not merely reduce the estate left behind but they represent that portion of a man's estate which would have attracted higher rates of duty. It was to prevent such a loss to revenue that the principle of aggregation was adopted in Clause (vii) of the Bill. The effect of the deletion of the Clause would be to further accelerate the making of gifts spread over a number of years and thereby impair greatly the main function of Gift Tax to strengthen the Estate Duty.

Clause (45):—The original clause exempted gifts made by public companies whose affairs are controlled by not less than six months. The clause as now amended exempts gifts made by companies, private or public, other than those in favour of certain specified

individuals properly considered as interested persons in such companies. The result is that whereas gifts made by individuals for political purposes or for charity (other than those sanctioned by Section 15B of Income-Tax Act) are taxable under this Bill, such gifts by companies are exempted altogether. In my view there is no justification for this discrimination in favour of companies, particularly when individuals can circumvent the provisions for taxing such gifts by resorting to the device of forming companies.

There are a few other points on which also I differ with the majority of the members. But as they are of minor importance, I do not think it necessary to elaborate them here.

NARENDRABHAI NATHWANI.

NEW DELHI;
The 2nd May, 1958.

III

I cannot reconcile myself to the provisions made in clause 45 (original 46) with a view to exempt gifts by companies. I wonder why gifts by companies, are to be favoured and are not to attract tax.

I also think that exemption limit of gifts to wife be cut down from 1 lakh to 25 thousand.

HARISH CHANDRA MATHUR.

NEW DELHI;
The 2nd May, 1958.

IV

We regret, we have to submit a minute of dissent. We are partially concerned in respect of the decision of the Select Committee to delete original clause 7 of the Bill.

The Bill contains numerous exemptions which considerably reduce the effectiveness of the statute as a measure to plug the loopholes in the complimentary fiscal statutes. The rates of tax are also fixed at a low level. It would suggest to anyone that the best way to avoid the full incidence of the transactions would be to distribute the gifts over a period of years instead of making all the gifts in one year. It was to prevent such attempts at fragmentation of gifts with a view to avoid the full incidence of taxation that a provision was incorporated in the Bill to aggregate gifts over a period of

five years for the purposes of determining the rate of tax applicable to gifts made in one previous year. This provision is probably the least we can do to defeat an easy method of evasion.

In the U.S.A. we find that gifts made since June 1932 are aggregated for the purpose of determining the rate.

We could have understood the deletion of the provision for aggregation of the gifts, if tax were levied with reference to the total wealth of the donor. We have not gone by that criterion. We are taxing the donor on the value of total gifts made by him during the previous year. Now if we allow him to pay tax at the rates applicable only to the value of gifts made during the previous year, we are in effect reducing this tax to a farce.

Under the circumstance, we are sorry we cannot be a party to this decision.

RENUKA RAY,
T. SANGANNA,
LILADHAR KOTOKI,
M. SHANKARAIYA.

NEW DELHI;
The 2nd May, 1958.

V

We regret that the exemptions provided in the Bill are so numerous and liberal that they are likely to defeat its main purpose. For one thing, it enlarges the scope for legal tax avoidance. For another, even the introduction of what is called the integrated tax structure will, in our opinion, fail to help the process of evolving an agalitarian society, primarily because of these liberal exemptions provided for in the Bill. We are in particular against the exemptions of gifts made to spouses and even if Parliament might be unable to accept this view we would strongly urge that the exemption limit in case of spouses should be brought down to Rs. 25,000. We also could not endorse provisions in the bill granting exemptions of gifts made by companies and see no reason whatsoever why individuals and companies should be viewed differently in this regard. The deletion of the provision in the original Bill regarding aggregation of gifts made in the preceding five years for the purpose of charging them at progressively higher rates is totally unacceptable to us as it would give further latitude to tax dodgers. On the contrary both to check evasion more effectively and secure revenues we feel that the period of such aggregation for the purposes of determining the rate should extend to 10 years.

While we are not against exemption of a general nature provided for in the Bill under clause 5 (v), yet we cannot ignore an unfortunate, but growing tendency in our country to organise charities on caste and communal basis. We, therefore, urge that more vigilance needs to be exercised in the matter of granting exemptions for gifts for charitable purposes.

Finally, in our efforts to evolve a broadbased, rational and integrated tax structure we should bear in mind the great importance of the administration machinery which, in our opinion, needs thorough overhauling. If the tax collecting machinery is not properly geared to shoulder the great responsibility that now devolves upon it, we are afraid all the new tax measures put together would fail to achieve their objective.

NEW DELHI;
The 2nd May, 1958.

B. K. KHADILKAR,
BIMAL COMAR GHOSE.

VI

I regret that basic differences of approach to a tax on gifts have compelled me to dissent from my colleagues. However, I must place on record my appreciation of the manner in which the Finance Minister handled this intricate question with tact, patience and consideration.

One can conceive of a gift tax either as a *substitute for* or as a *supplement to* the Estate Duty; one cannot have a tax on gifts which is both a substitute for and a supplement to a duty on estates. If a tax on gifts is to be thought of as a substitute as Mr. Kaldor did, it is possible to argue that such a tax should secure all the objectives of an estate duty—these objectives being reduction of inequalities in our society, avoidance of concentration of wealth in the hands of a few and prevention of non-functional accrual of wealth. If these are the purposes then all manner of safeguards must be introduced to ensure that under the cloak of making gifts property is not effectively transferred to those who would otherwise have been beneficiaries in respect of the Estate. If, however, a gift tax is to be a supplement to an estate duty—as it should be—the purpose has to be more restrictive. To the extent that gifts are not allowed to escape the incidence of taxation the law would be serving its purpose.

We have therefore to start with the existing provisions of Estate Duty as a *datum* and look upon the gift tax as a supplement to overcome specific lacunae in the administration of the Estate Duty. Consequently, a basic distinction has to be made between gifts to outsiders and gifts made for ostensibly charitable purposes which are likely to benefit persons having a stake in the Estate. In such cases, the rates of taxation may be stiff and comparable to those in the Estate Duty Act. This obviously implies that the incidence of gifts tax would be restricted in the first instance only to *prima facie* cases of avoidance of Estate Duty through the medium of gifts. A corollary to this proposition is that in cases where the Estate Duty returns show a surprisingly small Estate, taking all things into account the assessing authority should have the option to examine accounts and transfers up to a minimum period of six and a maximum to twelve years prior to the death of the donor. Moreover, the incidence of this gift tax, if any, should be made to fall primarily on the Estate, then on the individuals who have received gifts and lastly on charities. This by itself will act as a strong enough deterrent to using gifts as a means of avoiding Estate Duty. The other advantage in this approach is that it will confine the tax administration's activities only to likely cases of avoidance and not give it the power to make a roving enquiry into all manner of gifts made by the person. Even assuming that such a procedure causes inconvenience to assessees in a few cases the type of assessees likely to be affected would well be able to look after themselves. On the other hand, the Gifts Tax will not draw into its net large number of people many of whom may be unfamiliar with the technicalities of the new legislation.

Nor will such a procedure affect the normal functioning of business. But in the present Bill notwithstanding the improvements effected in clause 4(c) on the motion of the Finance Minister great hardship is likely to be caused to the proper functioning of business. For this clause, as it stands, postulates an exemption from the tax in cases of "a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim" being proved to the satisfaction of the Gifts Tax Officer to be *bona fide*. All types of unrecoverable debts ranging from anything over Rs. 100/- will be tax exempt only if the assessing authority is satisfied that the amount cannot be recovered! As the number of cases will be legion in practice the law cannot be enforced. But this is not a saving grace, since it is bad in principle to enact legislation which is effective in many cases only on paper. It will only serve to exaggerate the severity of laws quite unnecesarily. At the same time what is even more dangerous it brings a portion of the law into contempt.

Tax on charities

I regret that the Select Committee should have decided to retain the provision relating to taxation of charities which do not fall within the purview of section 15B of the Income-tax Act. One can understand the definition of 'charities' being restricted for purposes of Income-tax law. With high marginal rates of personal taxation persisting, it is not unlikely that an increasing proportion of the income may be withdrawn from the taxable pool if all charities are exempt from income-tax. But the present provision goes much further; not only do such charities attract income-tax but they will also attract the Gifts Tax. From a social point of view no tax definition can ever be adequate to cover all the socially desirable purposes of charity which in a country like ours fulfil vital needs—those of social security and welfare. Since the Select Committee has not chosen to make a distinction between 'charities' to outsiders and to those who have a stake in the Estate this provision will result in making it virtually impossible for non-approved charities to grow or even to exist.

It is a matter for some satisfaction that the Committee should have disapproved the principle of aggregation of all gifts for assessment purposes. Had the original proposal been retained it would have been utilised in all cases of assessment and this could not have been justified either on grounds of logic, equity or administrative convenience. Let us realise that according to the amending Estate Duty Bill, a valid gift is one which is made five years before the death of the donor; otherwise an Estate Duty will have to be paid on it. Under the Bill any gift will be liable to Gift Tax. Normally, there are few persons who can space out their gifts in such a manner as to reduce appreciably the duty leviable on the Estate. It is not as though owners of property are willing to take the risk of parting with their property five years before their anticipated death in order to secure a possible exemption from the Estate Duty. Besides the administrative difficulties involved in the adoption of the cumulative formula would have far outweighed any possible benefits that would have accrued to the exchequer. The Select Committee has therefore rightly frowned on the principle of aggregation.

But notwithstanding such improvements effected in the Bill, I cannot help feeling that the whole principle of taxing all gifts is most pernicious, since it makes no distinction between gifts which are used as instruments of avoidance of taxation and those which reflect the finer and nobler instincts of man. Strictly speaking, even gifts made out of current income to relatives who would normally have no share in the property will attract the Gift Tax. Let us

realise that the Expenditure Tax is levied on people with more than Rs. 36,000/- income and the proposed Estate Duty will be levied on Estates of Rs. 50,000/- in value. But the Gift Taxes would be applicable to small amounts. Hence those not liable to taxes on Expenditure and Estate Duty, and these would be a large number, would have a tendency to consume capital rather than either attract the Gifts Tax or become liable to the Estate Duty. Surely there is no social or moral justification for preventing all gifts. There is a confusion behind the basic purposes of this legislation which has vitiated large parts of it and which even if approved by Parliament would have to be reviewed within the next year or two.

A. KRISHNASWAMI.

NEW DELHI;
The 2nd May, 1958.

VII

The previous Finance Minister had announced that the Gift Tax Bill would be introduced to plug the loopholes in Estate Duty, Wealth Tax and Expenditure Tax etc. It was never meant to be an independent revenue measure.

I feel I would be failing in my duty if I do not add my humble observations. I am inclined to think that the circumstances are not ripe for imposing, in our country, a Gift Tax as an independent revenue measure. I feel, therefore, that communal, sectional and charity to non-profit making cultural Associations, clubs, commercial bodies etc. should be completely exempted.

It has been said that some of the unregistered charities are being misused by the descendents of the settlers of these charities. They rightly feel that Government should not allow such misuse of the charities. My humble suggestion is that wherever such misuse is being made by the heirs or the relatives of the settlers a separate law can be brought in to punish such persons, but that is no reason why tax should be levied on other kinds of charities. The Gift Tax should not become deterrent to the spirit of charity which is in vogue in the nature and traditions of the people from times immemorial.

KAMAL NAYAN BAJAJ.

NEW DELHI;
The 2nd May, 1958.

VIII

While I welcome the Gift-tax Bill on principle as a measure calculated to complete an integrated structure of direct personal taxation and as an effective means of plugging loopholes either in the

Estate Duty Act or in other similar measures, I am afraid the provisions go far beyond the requirements of the case in certain respects. I accept the principle that gifts should yield revenue to the State. But unfortunately in one major respect there has not been provided exemption to an important category of gifts.

2. I refer to clause 5, sub-clause (v) which reads as follows:—

(v) Gift-tax shall not be charged under this Act in respect of gifts made by any person to any institution of fund established for a charitable purpose to which the provisions of section 15B of the Income-tax Act apply.

The effect of it would be to impose a gift tax on gifts made to charities which do not fall within the purview of section 15B of the Income-tax Act. To my mind it is rather illogical that when income from such sectional or 'communal' charities are exempted under the Income-Tax Act and also for the purposes of Estate Duty and the Expenditure Tax, an exception should be made and they should be subject to tax under this Bill.

3. While one recognises that ours is a secular State, or rather non-denominational in matters of religion, what this clause does is to impose tax on genuine and *bona fide* charities and charitable institutions which have done excellent work over decades. The gift tax would also be levied and collected on all gifts to all religious institutions. *Bona fide* gifts to religious institutions of genuine type can hardly be regarded as gifts for the purpose of evading a tax.

4. I regret I am unable to share, on the following grounds, the views of the majority of the Committee in making such gifts taxable:

(1) So long as our State is not in position to provide for various requirements of the citizens, let alone a social security plan, it would not be advisable to discourage private philanthropy in the case of social service even though confined to one particular community or religious denomination.

(2) It would be unfortunate if on the grounds of eradicating communalism, genuine charitable institutions rendering excellent social service were taxed at time when our State cannot provide medical treatment to even 1% of the population and where there are millions without food, shelter and employment.

(3) Section 15B of the Income-Tax Act does not deal with charity as such, but only with provisions for a special tax relief in respect of particular donations.

(4) Religious institutions or Trusts in their very nature cannot be open to other communities. To tax them on that ground is tantamount to taxing the individual freedom of religion.

(5) The so-called 'communal' charities have for years provided relief to the poor, medical aid, education, housing for the poor and relief of distressed. It is absurd to suggest that contributions to such causes should be discouraged simply because the relief is confined to a particular community or to a religious denomination. Following the teachings of Jesus Christ "inasmuch as you do to the least of these, you do unto Me", I would suggest that if the State cannot provide relief of the poor, at least it should not discourage others from relieving the distress of these poor. It is after all a type of service to God.

(6) I would therefore suggest that there should be introduced in clause 2 the definition of "public charitable purposes" on much the same lines as it is defined in the Estate Duty Act 1953, clause 2, sub-clause (xvii) "Public Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any object of general public utility within the territory of India". Having adopted this definition in the Gift-tax Bill, I would suggest the amendment of sub-clause (v) of clause 5 by addition of the words "or for any public charitable purpose."

(6) I may add that there are thousands of so-called communal or religious charity Trusts which are genuine. It is the tradition of the Indian people to contribute gifts or subscriptions to such charities and those Trusts have filled an important requirement of our social and economic structure. It would be undesirable to exclude those Trusts or institutions from the benefit of the exemptions given in the Bill.

(7) It has been argued that what the Bill does is to impose a duty and a charitable minded man should not grudge paying extra to the State while paying to a charity. Today the rate of gift-tax ranges from 4 to 40%. One does not know when these might be stepped up and constitute an effective impediment to a person making a charity. It is futile to expect that a person would be diverting his charity to cosmopolitan purposes just because of the gift tax. The chances are he will not at all donate.

(8) There is another point relating to a provident fund, gratuity, etc. The Select Committee has added a new sub-clause (xiii) to clause 5 exempting "bonus, gratuity, or pension to an employee or a dependent from the operation of the tax" which is a welcome amendment, but these words may not include other retirement benefits, such as provident fund, retrenchment compensation, free passes on railways to retired railway servants, and so forth. I would therefore suggest the words "retirement benefits" being added to sub-clause (xiii) of clause 5.

(9) Unfortunately the exemptions do not cover also another case. While providing for exemption upto a lakh of rupees in case of wife, there is no provision for the benefit of children out of bonus, gratuity or Provident Fund. Thus where the retired employee getting a gratuity, bonus, or provident fund, say of Rs. 50,000, whose wife is dead, desires to set up his only son in business with a capital of Rs. 50,000 he would have to pay a gift-tax on this amount (less the basic exemption of Rs. 10,000). I presume that basic human instinct, and a fine instinct at that is, provision for one's sons who in this Bill are also not provided for even on the occasion of their marriage. To tax provident fund or other retirement benefits simply because they are passed on to the persons for whose benefit these are provided, as a gift, seems to me really going beyond the requirements of the case. I strongly oppose this undesirable feature in the Bill.

(10) I acknowledge the hon. Finance Minister had adopted a very reasonable attitude throughout the Select Committee proceedings in accommodating the view point of many Members of the Committee on different aspects of the Bill. Unfortunately on the subject matters of my minute of dissent, he has thought it fit to take up a different view which I am unable to share. I trust the House will consider these points and in its discretion make such amendments as will do justice to the cases I have cited above on which a section of the community deeply feels.

NEW DELHI;
The 2nd May, 1958.

NAUSHIR BHARUCHA,
P. R. ASSAR

IX

The Statement of objects and reasons of the Gift Tax Bill, 1958 has described this measure as the 'only effective method of checking

attempts at evasion or reduction of tax liability in regard to the Estate duty, income tax, wealth tax and expenditure tax.' In the course of the discussions in Parliament, fears were expressed by some that the reference of the bill to the Select Committee may result not only in liberalising the various provisions but may also provide more loop-holes for evasion. Some of those fears appear to be justified after a study of the changes made in the Select Committee.

In this connection attention may be drawn to the changes made in Clauses 3 and 5 and the omission of Clause 7. The omission of the Explanation to Clause 3 will provide opportunities for evasion of the tax by the husband by using the wife as a medium for making gifts. When the consequences of this omission of the Explanation to Clause 3 were realised a belated attempt has been made to rectify matters by adding a new sub-clause (iii) to Clause 5. This change, however, does not materially reduce the chances of evasion. In no country where gift tax is in vogue any special exemption is made for gifts made to wife. Why such exemption should at all be made there passes my comprehension, particularly when it is known that this kind of transfer through gifts in favour of the wife can be and has been used for evading taxes. Moreover, how many people are there in India who can afford to make substantial gifts amounting to Rs. 1 lakh to the wife? This provision is, therefore, meant to afford relief to those who are in no need of relief.

The concessions made to persons liable to gift tax as a result of the omission of original clause 7 in the matter of aggregation of gifts also do not seem justifiable. The following table gives an idea of the very heavy concessions now made assuming there is a donor making gifts up to Rs. 25 lakhs in value in the course of 13 years.

Assessment year	*Amount of gift*	*Tax under original Clause 7*	*Tax after the omission of Clause 7*
1958-59	2,00,000	14,000	14,000
1959-60	1,00,000	8,666	5,000
1960-61	3,00,000	38,000	26,000
1961-62	2,00,000	29,000	14,000
1962-63	1,00,000	15,111	5,000
1963-64	1,00,000	14,500	5,000
1964-65	5,00,000	85,833	56,000
1965-66	2,00,000	32,909	14,000
1966-67	1,00,000	15,600	5,000
1967-68	3,00,000	45,250	26,000
1968-69	2,00,000	35,538	14,000
1969-70	50,000	7,412	2,000
1970-71	1,50,000	21,750	9,000
	25,00,000	3,63,569	1,95,000

The amendment to Clause 46 (c) (new clause 45) excluding private companies will, in my opinion, provide further loopholes for tax evasion. There can be no justification for excluding these companies which are virtually family concerns. In any case public and private companies cannot be treated on a par for purposes of the Gift Tax.

From a rough calculation it would appear that the various concessions made by the Select Committee would reduce the expected revenue from gift-tax by 33 to 50 per cent. The concessions made in the Select Committee have neither helped the exchequer nor assisted in plugging the loopholes to evasion of taxes. Both these objects were served better by the original bill.

I regret I am constrained to put in this note of dissent despite my desire to accommodate myself to various sections of opinion represented on the Select Committee.

NEW DELHI; T. N SINGH.
The 2nd May, 1958.

X

1. We regret that we are not able to agree with the recommendations made by the majority of our colleagues regarding the Bill. Our dissent with the majority view is all the more necessitated because the very fundamental principle and object for which the Bill is introduced in the House would be negatived if the taxation measures included in the Bill are to be implemented as recommended by the majority of the Select Committee.

2. It is necessary for us to go into the origin of this Bill in order to realise the implications of the majority report. This Bill incorporates the last of the recommendations made by Prof. Kaldor in his report on Indian tax reform in which he suggested a series of taxes both from the point of view of revenue and also as a comprehensive tax structure which would minimise evasion to the most possible extent. We are sorry to submit that the Bill as recommended by the majority of the Select Committee fails to satisfy both these conditions. Prof. Kaldor in his report has made a categorieal statement as to the necessity of introducing the various kinds of taxes recommended by him. He has suggested "It is essential that the additional burden that will inevitably be imposed either through taxation or through an inflationary rise in prices on the broad masses of population should

be complemented by an efficient system of progressive taxation on the small minority of the well-to-do who in India number only about 1% of the population. When that should rise any expenditure during the Plan will inevitably increase the wealth of the richest classes disproportionately and distribution of the burden imposed on the community which will be contrary to the sense of justice and equity of a democratic society". If the report of the Select Committee on the Bill is viewed in the light of this observation made by the originator of the gift-tax idea himself we have no hesitation in recording that the Select Committee report frustrates the very object of the Bill itself.

3. Secondly Prof. Kaldor himself has estimated a revenue income of Rs. 30 crores a year by the introduction of the gift-tax but the Government itself by means of the Bill as it is introduced have an estimate of only Rs. 3 crores. By means of the changes the Bill has undergone in the Select Committee, we fear quite justifiably that even this estimate of Rs. 3 crores might itself be slashed down to a considerable extent. Therefore, the Bill does not satisfy even a shadow of the requirements and expectations.

4. The gift-tax is supposed to provide plugs to the various loopholes in the taxation structure, but because of the variety and number of exemptions given to the donor, these plugs themselves are bound to be hopelessly leaky and the very purpose of closing the loopholes stands frustrated.

5. Generally, we wish to record our extreme regret that the majority of our colleagues have failed to appreciate the economic and social implications which are sought to be achieved by means of such taxation measures. The social change we contemplate and the economic reformation we desire to which Parliament is committed cannot take place without a statutory revolution on the economics of distribution, accumulation and mode of spending of wealth and in India today the budget with its taxation measures is the most important means of attaining these social and economic ends. As a result of the changes the provisions of the Bill have been reduced to a symbolic compliance with the recommendations of Prof. Kaldor himself, at the same time openly denouncing even some of the corner stones of the recommendations. The rate of tax and the mode of the varying rate are examples of this. We feel that the Bill as a whole should have conformed to the broad basis of Prof. Kaldor's recommendations and the estimated revenue should have some similarity to the estimates made by such an eminent economist as Prof. Kaldor himself.

6. In the following paragraphs, we are recording our opinion on the different clauses of the Bill as reported by the Select Committee.

Clause 5(*1*) (*iii*). This clause exempts gift of savings certificates which the Government by notification in the official Gazette may exempt. This exempting clause is vague. We feel that provision should have been made in the Bill itself limiting the value of those certificates and also the minimum period during which they could not be encashed; otherwise, the very purpose and principle behind this exemption would be defeated. Therefore, we propose that the value of these certificates given by a single donor should not be more than Rs. 10,000 and such certificates could be encashable only after a period of 10 or 15 years.

Clause 5(*1*) (*v*). This clause exempts gifts made to any institution established for a charitable purpose and which come under the provisions of section 15B of the Income-tax Act. It is strange to note that section 15B of the Income-tax Act applies only to define the nature of the institution to which the gift is made, but section 15B does not apply in limiting the value of the gift. We are very strongly of the opinion that gifts made to any institution should not be exempted at all because in our experience we have found that a large number of these institutions are run only under cover of a charitable purpose but in these the ultimate beneficiaries boil down to a few individuals. Therefore a case for exemption does not arise on this count. On principle it will not be for the State to encourage charities and at least to subsidise charity by means of tax exemptions. In a planned socialistic pattern of society, such charities could ultimately help either to perpetuate or to create social and economic anarchy. Such institutions cannot also be safely charged with the various social functions which the State itself has undertaken to discharge. The emergence of the State as a major spender and investor, especially through social services and nationalised industries and the comprehensive schemes of social and educational services incorporated in our Second Five Year Plan should have considerable influence on our own conceptions of public charity. We do not feel that there is any justifiable case to exempt any institution from the operation of the gift-tax or any one who contributes to those institutions. This exemption, we fear, will be another loophole of evasion of the gift-tax.

Clause 5(*1*) (*vi*) (*i*). This exempts all gifts made for any charitable purpose without restriction either in character or extent before 1st April 1958. This exemption is quite unwarranted. It has been made quite clear at the time of introduction of the budget for 1957-58 that a gift-tax is going to be introduced from this year. Taking

advantage of this announcement, it is quite natural that a large number of transactions under cover of charity might have taken place and it is contrary to all principles of taxation that such transactions made with the full knowledge of the advent of such taxation be exempted. We submit that the exemptions contained in this clause should be removed.

Clause 5(*1*) *(vii)*. This clause is another exemption from tax of gifts made to relatives on the occasion of marriage upto a maximum of Rs. 10,000. There is no principle involved in this exemption. Prof. Kaldor himself has made a remark in his report that "*inter vivos* gifts are made on many occasions, as for example, on the marriage of children or grand children or when children reach maturity and set up a separate house-hold or business. Again there is a no *a priori* reason why such gifts should be differently treated for tax purposes than gifts arising through inheritance. It is quite likely that this exemption would deplete to a large extent the revenue which could be made available by means of the gift-tax". We propose deletion of this clause.

Clause 5(*1*) *(viii)*. This clause exempts gifts made by spouse upto the extent of a lakh. We fail to understand the reason for this exemption. It is impossible to conceive any social or humanitarian considerations behind this exemption and as a matter of fact the gift-tax is a measure to counteract the avoidance of Estate Duty, but by means of this exemption, the very purpose is defeated. In India one of the main inheritors of property is the wife herself and if a lakh should be gifted away tax-free, it means estate duty to that extent could be very easily avoided. In almost all cases, the wife is to live with her hubsand in one household under his care and he looked after her needs and necessities. Any gift made to the wife can be only with a motive to avoid taxation because necessity is not involved in the case. Therefore, by retaining this clause the majority of our colleagues are giving a bounty for successful evasion. We are opposed to this and suggest deletion of the clause.

Clause 5(*1*) *(xi)*. A gift made in contemplation of death is exempted. The idea seems to be that according to the new amendments in the Estate Duty Act, any gift made five years prior to death is liable to estate duty and therefore an exemption could be given under this Act, but this throws open another wide loophole for evasion because contemplation of death is more or less subjective as far as the donor is concerned and the donor even if he lives for more than 5 years, even estate duty could be avoided on this ground. Therefore, we oppose this exempting clause.

Clause 5(*1*) (*xiv*) which exempts gifts made *bona fide* for the purpose of business, profession or vocations. This is quite unwarranted and they are putting a premium on corruption and another avenue is opened for evasion of tax. We suggest that this is one of the most serious loopholes for evasion of the proposed tax measure and this exempting clause should be deleted.

Clause 5(*1*) (*xvi*). We fail to understand why princes should be given an exemption from this tax. Even though the new tax measures are supposed to be in furtherance of the State policy of socialistic pattern of the society, it is a strange paradox that attempts are being made to maintain the *status quo* of the princely order and their revenues under this Bill. We propose that the clause should be deleted.

Clause 5(*2*). The general exemption given by the Bill to the extent of Rs. 10,000 is excessive. Exemption should be brought down at least to a sum of Rs. 5,000.

Clause 6(*2*) throws another loophole because gifts may be made which are revocable at any time of the life time of the donor. The clause is vague and capable of different interpretations and we feel that this sub-clause should be re-worded to mean that all gifts made which could be revoked after a time specified should be treated as gifts made for the purpose of this Act and it should be deemed that in all such gifts the property has completely passed from the donor to the donee.

The deletion of the provisions in the original Bill which provides for aggregation of the value of gifts made in the preceding five years for the purpose of assessing the liability of the tax at progressively higher rates is strongly opposed by us. We consider that this deletion of the original provision of the Bill is uncalled for and this would give a further latitude to tax-evasion both in the interests of larger revenues and to splice the loop as narrow as possible on tax evasion, we recommend that the duration of such aggregation for the purpose of determining tax liability and the rate should be extended to at least 10 years.

We are also sorry that the machinery for enforcing this tax is nothing but a fair copy of the provisions of the previous tax statutes. It is high time that some radical change is made in the whole administrative machinery for collection of taxes in the light of our experience of large arrears and alarming evasion. We also wish to point out that an appellate authority having a right of reference again to the High Court is too much a latitude given to the assessees. The High Court has already powers to interfere under Article 226 of the

Constitution. The Supreme Court has also power under Article 136 to interfere in proper cases. When these remedies are there, it will be too much to create another reviewing authority. As the present state of affairs shows, a large amount of public money which should be at the disposal of the Exchequer without delay for the purpose of the Plan, is bound to be locked up in the various High Courts and Supreme Court and the ultimate result will be a state of anarchy as far as actual collection of the tax is concerned. We are of the opinion that even the existing jurisdiction of the High Court and the Supreme Court has created much delay in the collection of these revenues and such difficulties could only be avoided by a re-thinking of the whole process of reviewing authorities. At any rate we recommend that the right of reference to High Courts should not be retained and in case of all taxation measures the Government should think of getting rid of the various jurisdictions of High Courts and the Supreme Court and instead establish some such suitable machinery for reviewing the assessments made.

Section 45(c) is newly inserted by the Select Committee. This exempts all gifts made by any Company. This exemption, we feel, is a total negation of the very objects and reasons of the Act. Under this all the public and private companies would be at perfect liberty to gift away as much money as possible to any one concerned at the same time without the necessity of paying any tax on that. The Objects and Reasons of the Bill, we wish to point out to the House, itself stands negatived by this clause. The Objects and Reasons states, "The object of this Bill is to levy a tax on gifts made by individuals, Hindu undivided families, companies, firms and associations of persons." We fear that the Select Committee has not even jurisdiction to go beyond the Objects and Reasons which has been accepted by the House in principle. Further, this exemption is a recognition of the right of these various monopoly companies in India for subsidising various organisations, including political parties. This is an outrage upon our own democratic conceptions and also it is a political immorality. Two eminent High Courts of our country have already pointed out the necessity of suitable legislation to prevent the public companies from contributing to political parties. In the wake of these judgments, this particular exemption is startling to us. The Parliament would be giving a statutory recognition to such contributions already condemned as immoral by the High Courts. We would also be legislating upon an important matter which affects the very basis of our democratic institutions and life by means of this clause without even being aware of the nature, seriousness and implications of our own doings. We strongly oppose this clause on this ground primarily. Secondly, this clause depletes the possible revenue which would otherwise be available by means of this tax. At this

time even from the small estimated revenue income by this Bill, we are not prepared to agree to cut away a large size of the possible revenue. We feel that we will be doing a disservice to our national economy if we agree for this large scale exemptions. Finally, we are also convinced that this gives abundant scope for evasion of this tax also by individuals. Therefore, we strongly recommend that this clause may be deleted.

In conclusion, we wish to submit that the entire Bill should be re-modelled with the exemptions from the liability to tax limited to the utmost minimum and then only it is possible to conform at least in name to the recommendations made by Prof. Kaldor himself. Therefore, we submit that the House should consider about these exemptions in particular with all seriousness and bring such amendments to the Select Committee's report as are required to achieve the very objects and reasons of the Bill.

NEW DELHI;
The 2nd May, 1958.

T. C. N. MENON,
PRABHAT KAR.

Bill No. 17-A of 1958

THE GIFT-TAX BILL, 1958

ARRANGEMENT OF CLAUSES

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PRELIMINARY

CHAPTER II

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MISCELLANEOUS

Bill No. 17-A of 1958.

THE GIFT-TAX BILL, 1958

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidelined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

A

BILL

to provide for the levy of gift-tax.

BE it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Gift-tax Act, 1958.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall be deemed to have come into force on the 1st day of April, 1958.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*i*) "Appellate Assistant Commissioner" means a person empowered to exercise the powers of the Appellate Assistant Commissioner of Gift-tax under section 8;

(*ii*) "Appellate Tribunal" means the Appellate Tribunal appointed under section 5A of the Income-tax Act;

(*iii*) "assessee" means a person by whom gift-tax or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the determination of the gift-tax payable by him;

(*iv*) "assessment year" means the year for which tax is chargeable under section 3;

(*v*) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924; 4 of 1924.

(*vi*) "Commissioner" means a person empowered to exercise the powers of a Commissioner of Gift-tax under section 9;

(*vii*) "company" means a company as defined in section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of section 591 of that Act; 1 of 1956.

(*viii*) "donee" means any person who acquires any property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary;

(*ix*) "donor" means any person who makes a gift;

(*x*) "executor" means an executor or administrator of the estate of a deceased person;

(*xi*) "firm" has the meaning assigned to it in the Indian Partnership Act, 1932; 9 of 1932.

(*xii*) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be a gift under section 4;

(*xiii*) "Gift-tax Officer" means the Income-tax Officer authorised to perform the functions of a Gift-tax Officer under section 7;

(*xiv*) "Income-tax Act" means the Indian Income-tax Act, 1922; 11 of 1922.

(*xv*) "Income-tax Officer" means a person appointed to be an Income-tax Officer under the Income-tax Act;

(*xvi*) "Inspecting Assistant Commissioner of Gift-tax" means a person empowered to exercise the functions of an Inspecting Assistant Commissioner of Gift-tax under section 10;

(*xvii*) "partner" has the meaning assigned to it in the Indian Partnership Act, 1932, and includes a person who being a minor has been admitted to the benefits of partnership; 9 of 1932.

(*xviii*) "person" includes a Hindu undivided family or a company or an association or a body of individuals or persons, whether incorporated or not;

(*xix*) "prescribed" means prescribed by rules made under this Act;

(*xx*) "previous year", in relation to any assessment year—

(*a*) in the case of an assessee having a source of income, profits or gains in respect of which there is no previous year under the Income-tax Act, means the twelve months ending on the 31st day of March immediately preceding the assessment year;

(*b*) in the case of an assessee having different previous years under the Income-tax Act for different sources of income, profits or gains, means that previous year of twelve months determined as the previous year under sub-clause (*a*) of clause (*11*) of section 2 of the Income-tax Act or such period determined as the previous year under sub-clause (*b*) of clause (*11*) of that section, whichever expired last;

(*c*) in the case of any other assessee, means the previous year as defined in clause (*11*) of section 2 of the Income-tax Act if an assessment were to be made under that Act for that year;

(*xxi*) "principal officer", used with reference to a company or any association of persons, means—

(*a*) the secretary and treasurer, manager, managing agent, managing director or agent of the company or association; or

(*b*) any person connected with the management of the affairs of the company or association upon whom the Gift-tax Officer has served a notice of his intention of treating him as the principal officer thereof;

(*xxii*) "property" includes any interest in property, movable or immovable;

(*xxiii*) "taxable gifts" means gifts chargeable to Gift-tax under this Act;

(*xxiv*) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(*a*) the creation of a trust in property;

(*b*) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person;

(*xxv*) "valuer" means a valuer appointed under section 4 of the Estate Duty Act, 1953. 34 of 1953.

CHAPTER II

CHARGE OF GIFT-TAX AND GIFTS SUBJECT TO SUCH CHARGE

Charge of gift-tax.

3. Subject to the other provisions contained in this Act, there shall be charged * * * * * for every financial year commencing on and from the 1st day of April, 1958, a tax (hereinafter referred to as gift-tax) in respect of the gifts, if any, made by a person during the previous year (other than gifts made before the 1st day of April 1957) at the rate or rates specified in the Schedule.

* * * * *

Gifts to include certain transfers.

4. For the purposes of this Act,—

(*a*) where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift made by the transferor;

(*b*) where property is transferred for a consideration which, * * * * * having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee, to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift made by the transferor;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, * * * the value of the release, discharge, surrender, forfeiture or abandoment, to the extent to which it has not been found to the satisfaction of the Gift-tax Officer to have been *bona fide*, shall be deemed to be a gift made by the person responsible for the release, discharge, surrender, forfeiture or abandonment;

* * * * *

(*d*) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consi-

deration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any other person shall be deemed to be a gift made in his favour by the person who causes or has caused the property to be so vested.

Exemption in respect of certain gifts.

5. (*1*) Gift-tax shall not be charged under this Act in respect of gifts made by any person—

(*i*) of immovable property situate outside the territories to which this Act extends;

(*ii*) of movable property situate outside the said territories unless the person—

(*a*) being an individual, is a citizen of India and is ordinarily resident in the said territories, or

(*b*) not being an individual, is resident in the said territories,

during the previous year in which the gift is made;

(*iii*) of property in the form of savings certificates issued by the Central Government, which that Government, by notification in the Official Gazette, exempts from gift-tax;

(*iv*) to the Government or any local authority;

(*v*) to any institution or fund established for a charitable purpose to which the provisions of section 15B of the Income-tax Act apply;

(*vi*) for any charitable purpose not falling within clause (*v*)—

(*i*) made at any time before the 1st day of April, 1958; or

(*ii*) made at any time after that date subject, in respect of each such gift, to a maximum of rupees one hundred in value and, in respect of such gifts in any one previous year to the same donee, to a maximum of rupees five hundred in value in the aggregate;

(*vii*) to any relative dependent upon him for support and maintenance, on the occasion of the marriage of the relative, subject to a maximum of rupees ten thousand in value in respect of the marriage of each such relative;

(*viii*) to his * * or her spouse, subject to a maximum of rupees one lakh in value in the aggregate in one or more previous years, the expression "spouse" in this clause, where there are more wives than one, meaning all the wives together;

(*ix*) of policies of insurance or annuities to * * * any person (other than his wife) who is dependent upon him for support and maintenance, subject to a maximum of rupees ten thousand in value in the aggregate in one or more previous years of the benefits in respect of each such donee;

(*x*) under a will;

(*xi*) in contemplation of death;

(*xii*) for the education of his children, to the extent to which the gifts are proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case;

(*xiii*) being an employer, to any employee by way of bonus, gratuity or pension or to the dependents of a deceased employee, to the extent to which the payment of such bonus, gratuity or pension is proved to the satisfaction of the Gift-tax Officer as being reasonable having regard to the circumstances of the case and is made solely in recognition of the services rendered by the employee;

(*xiv*) in the course of carrying on a business, profession or vocation, to the extent to which the gift is proved to the satisfaction of the Gift-tax Officer to have been made *bona fide* for the purpose of such business, profession or vocation;

(*xv*) to any person in charge of any such *Bhoodan* or *Sampattidan* movement as the Central Government may, by notification in the Official Gazette, specify;

(*xvi*) out of the sums, if any, guaranteed or assured by the Central Government as his privy purse, if the gifts are made for—

(*a*) the maintenance of any relatives dependent on him for support and maintenance; or

(*b*) for the performance of any official ceremonies:

Provided that such gifts are in accordance with the practice, usage or tradition of the family to which the person making the gift belongs.

(2) Without prejudice to the provisions contained in sub-section (1), gift-tax shall not be charged under this Act in respect of gifts made by any person during the previous year, subject to a maximum of rupees ten thousand in value. * * * * *

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), where either spouse makes any gifts out of any such gifts received by that spouse as fall within clause (*viii*) of sub-section (1), the gifts so made shall be deemed to be taxable gifts made by that spouse and nothing contained in sub-section (1) or sub-section (2) shall apply in relation to any such gifts.

Explanation.—For the purposes of this section,—

(*a*) an individual shall be deemed to be ordinarily resident in the territories to which this Act extends during the previous year in which the gift is made if during that year he is regarded as a resident but not as not ordinarily resident in the taxable territories within the meaning of the Income-tax Act;

(*b*) a Hindu undivided family, firm or other association of persons shall be deemed to be resident in the territories to which this Act extends during any previous year unless, during that year, the control and management of its affairs was situated wholly outside the said territories;

(*c*) a company shall be deemed to be resident in the territories to which this Act extends during the previous year, if—

(*i*) it is a company formed and registered under the Companies Act, 1956, or is an existing company within the meaning of that Act; or 1 of 1956.

(*ii*) during that year, the control and management of that company was situated wholly in the said territories;

(*d*) "gifts made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925. 39 of 1925.

Value of gifts, how determined.

6. (1) The value of any property other than cash transferred by way of gift shall, subject to the provisions of sub-sections (2) and (3), be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market on the date on which the gift was made.

(2) Where a person makes a * gift which is not revocable for a specified period, the value of the property gifted shall be the capitalised value of the income from the property gifted during the period for which the gift is not revocable.

(3) Where the value of any property cannot be estimated under sub-section (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner.

* * * * *

CHAPTER III

GIFT-TAX AUTHORITIES

Gift-tax Officers.

7. Every Income-tax Officer having jurisdiction or exercising powers as such under the Income-tax Act in respect of any person shall perform the function of a Gift-tax Officer under this Act in respect of that person.

Explanation.—For the purposes of this section, the Income-tax Officer having jurisdiction in relation to a person who has no income assessable to income-tax under the Income-tax Act, means the Income-tax Officer of the area in which that person resides.

Appellate Assistant Commissioners of Gift-tax.

8. The Board may empower as many persons as it thinks fit to exercise under this Act the functions of an Appellate Assistant Commissioner of Gift-tax, and on being so empowered the Appellate Assistant Commissioners shall perform their functions in respect of such areas or such persons or such classes of persons as the Board may direct, and where such directions have assigned to two or more Appellate Assistant Commissioners the same areas or the same persons or the same classes of persons they shall perform their functions in accordance with such orders as the Board may make for the distribution and allocation of the work to be performed.

Commissioners of Gift-tax.

9. The Board may empower as many persons as it thinks fit to exercise under this Act the functions of a Commissioner of Gift-tax, and on being so empowered the Commissioners of Gift-tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Board may direct, and where such directions have assigned to two or more Commissioners the same area, or the same persons or the same classes of persons they shall have concurrent jurisdiction subject to such orders, if any, as the Board may make for the distribution and allocation of the work to be performed.

Inspecting Assistant Commissioners of Gift-tax.

10. The Commissioner of Gift-tax may empower as many persons as he thinks fit to exercise under this Act the functions of an Inspecting Assistant Commissioner of Gift-tax, and on being so

empowered the Inspecting Assistant Commissioners of Gift-tax shall perform their functions in respect of such areas or such persons or such classes of persons as the Commissioner may direct, and where such directions have assigned to two or more Inspecting Assistant Commissioners the same area or the same persons or the same classes of persons they shall perform their functions in accordance with such orders as the Commissioner may make for the distribution and allocation of the work to be performed.

Gift-tax Officers to be subordinate to the Commissioner of Gift-tax and the Inspecting Assistant Commissioner of Gift-tax.

11. The Gift-tax Officers shall be subordinate to the Commissioner of Gift-tax and the Inspecting Assistant Commissioner of Gift-tax within whose jurisdiction they perform their functions.

Gift-tax authorities to follow orders, etc. of the Board

12. All officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board:

Provided that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner of Gift-tax in the exercise of his appellate functions.

CHAPTER IV

ASSESSMENT

Return of gifts.

13. (1) Every person who during a previous year has made any taxable gifts shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Gift-tax Officer a return in the prescribed form and verified in the prescribed manner.

(2) If the Gift-tax Officer is of opinion that in respect of the gifts made by a person during any previous year he is liable to gift-tax under this Act, then notwithstanding anything contained in sub-section (1), he may serve a notice upon such person requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner.

(3) The Gift-tax Officer may in his discretion extend the date for the delivery of the return under this section.

Return after due date and amendment of return.

14. If any person has not furnished a return within the time allowed under section 13, or having furnished a return under that section, discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

Assessment.

15. (*1*) If the Gift-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 13 or section 14 is complete, he shall assess the value of the taxable gifts made by the assessee and determine the amount payable by him as gift-tax.

(*2*) If the Gift-tax Officer is not so satisfied, he shall serve a notice on the assessee either to attend in person at his office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the assessee may rely in support of his return.

(*3*) The Gift-tax Officer, after hearing such evidence as the person may produce and such other evidence as he may require on any specified points shall, by order in writing, assess the value of taxable gifts made by the assessee and determine the amount payable by him as gift-tax.

(*4*) For the purpose of making an assessment under this Act, the Gift-tax Officer may serve on any person who has made a return under sub-section (*1*) of section 13 or section 14, or upon whom a notice has been served under sub-section (*2*) of section 13, a notice requiring him to produce or cause to be produced on a date specified in the notice such accounts, records or other documents as the Gift-tax Officer may require.

(*5*) If any person fails to make a return in response to any notice under sub-section (*2*) of section 13 or fails to comply with the terms of any notice issued under sub-section (*2*) or sub-section (*4*), the Gift-tax Officer shall estimate the value of taxable gifts to the best of his judgment and determine the amount payable by the person as gift-tax.

Gift escaping assessment.

16. (*1*) If the Gift-tax Officer—

(*a*) has reason to believe that by reason of omission or failure on the part of an assessee to make a return under section 13 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, any taxable gift has escaped assessment for that year, whether

by reason of under-assessment or assessment at too low a rate or otherwise; or

(*b*) has, in consequence of any information in his possession, reason to believe, not withstanding that there has been no such omission or failure as is referred to in clause (*a*), that any taxable gift has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise;

he may, in cases falling under clause (*a*) at any time within eight years and in cases falling under clause (*b*) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 13, and may proceed to assess or re-assess any taxable gift which has escaped assessment, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

(*2*) Nothing contained in this section limiting the time within which any proceedings for assessment or re-assessment may be commenced shall apply to an assessment or reassessment to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 22, section 23, section 24, section 26 or section 28.

Penalty for default and concealment.

17. (*1*) If the Gift-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (*1*) or sub-section (*2*) of section 13, or section 16 or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (*2*) or sub-section (*4*) of section 15; or

(*c*) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof;

he or it may, by order in writing, direct that such person shall pay by way of penalty—

(*i*) in the case referred to in clause (*a*), in addition to the amount of gift-tax payable by him, a sum not exceeding one and a half times the amount of such tax, and

(*ii*) in the case referred to in clause (*b*) or clause (*c*), in addition to the amount of gift-tax payable by him, a sum not exceeding one and a half times the amount of the tax, if any, which would have been avoided if the return made by such person under section 13, section 14, or section 16, as the case may be, had been accepted as correct.

(*2*) No order shall be made under sub-section (*1*) unless the person concerned has been given a reasonable opportunity of being heard.

(*3*) No prosecution for an offence under this Act shall be instituted in respect of the same facts in relation to which a penalty has been imposed under this section.

(*4*) The Gift-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Gift-tax.

Rebate on advance payments.

18. (*1*) If a person making a taxable gift of the value of not less than rupees ten thousand pays into the treasury, in the case of a taxable gift made before the 16th day of July 1958, before the 1st day of August, 1958, and, in the case of any other taxable gift, within fifteen days of his making the gift, an amount calculated in the manner specified in sub-section (*2*), he shall, at the time of assessment under section 15, be given credit in addition to the amount so paid, for an amount equal to ten per cent. of the amount so paid.

(*2*) The amount to be paid into the treasury under sub-section (*1*) shall be—

(*a*) where the value of the gift does not exceed rupees fifty thousand, four per cent. of the value;

(*b*) where the value of the gift exceeds rupees fifty thousand but does not exceed rupees two hundred thousand, eight per cent. of the value; and

(*c*) in any other case, fifteen per cent. of the value.

CHAPTER V

LIABILITY TO ASSESSMENT IN SPECIAL CASES

Tax of deceased person payable by legal representative.

19. (*1*) Where a person dies, his executor, administrator, or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the gift-tax determined as payable by such person, or any sum which would have been payable by him under this Act if he had not died.

(2) Where a person dies without having furnished a return under section 13, or after having furnished a return which the Gift-tax Officer has reason to believe to be incorrect or incomplete, the Gift-tax Officer may make an assessment of the value of the taxable gifts made by such person and determine the gift-tax payable by him, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which might, under the provisions of section 15 have been required from the deceased person.

(3) The provisions of sections 13, 14 and 16 shall apply to an executor, administrator or other legal representative as they apply to any person referred to in that section.

Assessment after partition of a Hindu undivided family.

20. (1) Where, at the time of making an assessment, it is brought to the notice of the Gift-tax Officer that a partition has taken place among the members of a Hindu undivided family, and the Gift-tax Officer, after enquiry, is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect and he shall make assessments on the amount of taxable gifts made by the family as such as if no partition had taken place and each member or group of members shall be liable jointly and severally for the tax assessed on the value of the taxable gifts made by the joint family as such.

(2) Where the Gift-tax Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family.

Liability in case of discontinued firm or association of persons.

21. (1) Where a firm or association of persons liable to pay gift-tax has been discontinued or dissolved, the gift-tax Officer shall determine the gift-tax payable by the firm or association of persons as such as if no such discontinuance or dissolution had taken place.

(2) If the Gift-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings under this Act in respect of any such firm or other association of persons as is referred to in sub-section (1) is satisfied that the firm or association is guilty of any of the acts specified in clause (a) or clause (b) or clause (c) of sub-section (1) of section 17, he or it may impose or direct the imposition of a penalty in accordance with the provisions of that section.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm or a member of the association, as the case may be, shall be jointly and severally liable for the amount of tax or penalty payable, and all the provisions of Chapter VII, so far as may be, shall apply to any such assessment or imposition of penalty.

CHAPTER VI

APPEALS, REVISIONS AND REFERENCES

Appeal to the Appellate Assistant Commissioner from orders of Gift-tax Officers.

22. (1) Any person,—

(a) objecting to the value of his taxable gifts determined under this Act; or

(b) objecting to the amount of gift-tax determined as payable by him under this Act; or

(c) denying his liability to be assessed under this Act; or

(d) objecting to any penalty imposed by the Gift-tax Officer under section 17, or

(e) objecting to any order of the Gift-tax Officer under sub-section (2) of section 20; or

(f) objecting to any penalty imposed by the Gift-tax Officer under sub-section (1) of section 46 of the Income-tax Act as applied under section 33 for the purposes of gift-tax;

may appeal to the Appellate Assistant Commissioner against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner:

Provided that no appeal shall lie under clause (f) unless the tax has been paid before the appeal is filed.

(2) An appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to, or the date on which any order objected to, is communicated to him, but the Appellate Assistant Commissioner may admit an appeal after the expiration of the period aforesaid if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(3) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(4) The Appellate Assistant Commissioner may,—

(a) at the hearing of an appeal allow an appellant to go into any ground of appeal not specified in the grounds of appeal;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Gift-tax Officer.

(5) In disposing of an appeal, the Appellate Assistant Commissioner may pass such order as he thinks fit which may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) A copy of every order passed by the Appellate Assistant Commissioner under this section shall be forwarded to the appellant and the Commissioner.

Appeal to the Appellate Tribunal from orders of the Appellate Assistant Commissioner.

23. (1) Any assessee objecting to an order passed by the Appellate Assistant Commissioner under section 17 or section 22 or to an order passed by the Commissioner under section 17 may appeal to the Appellate Tribunal within sixty days of the date on which he is served with notice of such order.

(2) The Commissioner may, if he is not satisfied as to the correctness of any order passed by an Appellate Assistant Commissioner under section 22 direct the Gift-tax Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days of the date on which the order is communicated to the Commissioner.

(3) The Appellate Tribunal may admit an appeal after the expiry of sixty days referred to in sub-sections (1) and (2) if it is satisfied that there was sufficient cause for not presenting it within that period.

(4) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of rupees one hundred.

(5) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person

affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(6) Where the appellant objects to the valuation of any gift, the Appellate Tribunal may, and if the appellant so requires, shall, refer the question of disputed value to the arbitration of two valuers, one of whom shall be nominated by the appellant and the other by the respondent, and the Appellate Tribunal shall, so far as that question is concerned, pass its order under sub-section (5) conformably to the decision of the valuers:

Provided that if there is a difference of opinion between the two valuers, the matter shall be referred to a third valuer nominated by agreement, or failing agreement, by the Appellate Tribunal, and the decision of that valuer on the question of valuation shall be final.

(7) The costs of any arbitration proceeding under sub-section (6) shall be borne by the Central Government or the assessee, as the case may be, at whose instance the question was referred to the valuers:

Provided that where the assessee has been wholly or partially successful in any reference made at his instance, the extent to which the costs shall be borne by the assessee shall be at the discretion of the Appellate Tribunal.

(8) The valuers may, in disposing of any matter referred to them for arbitration under sub-section (6), hold or cause to be held such inquiry as they think fit, and after giving the appellant and the respondent an opportunity of being heard, pass such orders thereon as they think fit and shall send a copy of such order to the Appellate Tribunal.

(9) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the assessee and the Commissioner.

(10) Save as provided in section 26, any order passed by the Appellate Tribunal on appeal shall be final.

(11) The provisions of sub-sections (5), (7) and (8) of section 5A of the Income-tax Act shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Income-tax Act.

Power of Commissioner to revise orders of subordinate authorities.

24. (*1*) The Commissioner may, either on his own motion or on application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry or cause such inquiry to be made, and, subject to the provisions of this Act, pass such order thereon not being an order prejudicial to the assessee, as the Commissioner thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section in any case—

(*a*) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal and the time within which such appeal can be made has not expired or, in the case of the Appellate Tribunal, the assessee has not waived his right of appeal;

(*b*) where the order is pending in appeal before the Appellate Assistant Commissioner or has been the subject of an appeal to the Appellate Tribunal;

(*c*) where the application is made by the assessee for such revision unless—

(*i*) the application is accompanied by a fee of rupees twenty-five; and

(*ii*) the application is made within one year from the date of the order sought to be revised or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period; and

(*d*) where the order is sought to be revised by the Commissioner on his own motion, if such order is made more than one year previously.

Explanation.—For the purposes of this sub-section,—

(*a*) the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner, and

(*b*) an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(*2*) Without prejudice to the provisions contained in sub-section (*1*) the Commissioner may call for and examine the record of any proceeding under this Act, and, if he considers that any order passed

therein by a Gift-tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

(*3*) No order shall be made under sub-section (*2*) after the expiry of two years from the date of the order sought to be revised.

Appeal to the Appellate Tribunal from orders of enhancement by commissioner.

25. (*1*) Any assessee objecting to an order of enhancement made by the Commissioner under section 24 may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.

(*2*) An appeal to the Appellate Tribunal under sub-section (*1*) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of rupees one hundred.

(*3*) The provisions of sub-sections (*3*) and (*5*) to (*10*) inclusive of section 23 shall apply in relation to any appeal under this section as they apply in relation to any appeal under that section.

Reference to High Court.

26. (*1*) Within ninety days of the date upon which he is served with an order under section 23 or section 25, the assessee or the Commissioner may present an application in the prescribed form and where the application is by the assessee, accompanied by a fee of rupees one hundred, to the Appellate Tribunal requiring the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall, if in its opinion, a question of law arises out of such order, state the case for the opinion of the High Court.

(*2*) An application under sub-section (*1*) may be admitted after the expiry of the period of ninety days aforesaid if the Appellate Tribunal is satisfied that there was sufficient cause for not presenting it within the said period.

(*3*) If, on an application made under sub-section (*1*), the Appellate Tribunal,—

(*a*) refuses to state a case on the ground that no question of law arises, or

(*b*) rejects it on the ground that it is time-barred,

the applicant may, within ninety days from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied

ness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that, if in any case where the Appellate Tribunal has been required by an assessee to state a case the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub-section (*1*) shall be refunded to him.

(4) The statement to the High Court shall set forth the facts, the determination of the Appellate Tribunal and the question of law which arises out of the case.

(5) If the High Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modification therein as it may direct.

(*6*) The High Court, upon hearing any such case, shall decide the question of law raised therein, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the grounds on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(*7*) Where the amount of any assessment is reduced as a result of any reference to the High Court, the amount, if any, overpaid as gift-tax shall be refunded with such interest as the Commissioner may allow, unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to the Supreme Court, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal in the Supreme Court.

(*8*) The costs of any reference to the High Court shall be in the discretion of the Court.

(*9*) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court under this section. 9 of 1908.

Hearing by High Court.

27. When a case has been stated to the High Court under section 26, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority of such Judges, if any:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

Appeal to Supreme Court.

28. (*1*) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 26 in any case which the High Court certifies as a fit case for appeal to the Supreme Court.

(*2*) Where the judgment of the High Court is varied or reversed on appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (*6*) of section 26.

(*3*) The High Court may, on application made to it for the execution of any order of the Supreme Court in respect of any costs awarded by it, transmit the order for execution to any Court subordinate to the High Court.

CHAPTER VII

PAYMENT AND RECOVERY OF GIFT-TAX

Gift-tax by whom payable.

29. Gift-tax shall be payable by the donor but where in the opinion of the Gift-tax Officer the tax cannot be recovered from the donor, it may be recovered from the donee:

Provided that the amount of the tax which may be recovered from the donee shall not exceed that portion of the gift-tax which is attributable to the value of the gift made to the donee by the donor as at the date of the gift.

Gift-tax to be charged on property gifted.

30. Gift-tax payable in respect of any gift comprising immovable property shall be a first charge on that property but any such charge shall not affect the title of a *bona fide* purchaser for valuable consideration without notice of the charge.

Notice of demand.

31. When any tax or penalty is due in consequence of any order passed under this Act, the Gift-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be payable.

Recovery of tax and penalties.

32. (*1*) Any amount specified as payable in a notice of demand issued under section 31 shall be paid within the time, at the place, and to the person mentioned in the notice, or if no time is so mentioned, then on or before the first day of the second month following the date of service of the notice, and any assessee or other person liable to pay the amount failing so to pay shall be deemed to be in default.

(*2*) Notwithstanding anything contained in this section, where an assessee has presented an appeal under section 22, the Gift-tax Officer may, in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

Mode of recovery.

33. The provisions of sub-sections (*1*), (*1A*), (*2*), (*3*), (*4*), (*5*), (*5A*), (*6*) and (*7*) of section 46 and section 47 of the Income-tax Act shall apply as if the said provisions were provisions of this Act, and referred to gift-tax and sums imposed by way of penalty under this Act instead of to income-tax and sums imposed by way of penalty under that Act, and to Gift-tax Officer and Commissioner of Gift-tax instead of to Income-tax Officer and Commissioner of Income-tax.

CHAPTER VIII

MISCELLANEOUS

Rectification of mistakes.

34. At any time within four years from the date of any order passed by him, or it, the Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal may, on his, or its, own motion rectify any mistake apparent from the record and shall, within a like period rectify any such mistake which has been brought to the notice of the Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner or the Appellate Tribunal, as the case may be, by an assessee:

Provided that no such rectification shall be made which has the effect of enhancing the amount of gift-tax determined unless the assessee has been given a reasonable opportunity of being heard in the matter.

Prosecution.

35. (*1*) If any person fails without reasonable cause,—

(*a*) to furnish in due time any return of gifts under this Act;

(*b*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*2*) or sub-section (*4*) of section 15, such accounts, records and documents as are referred to in the notice;

(*c*) to furnish within the time specified any statement or information which such person is bound to furnish to the Gift-tax Officer under section 37;

he shall, on conviction before a magistrate, be punishable with fine which may extend to rupees ten for every day during which the default continues.

(*2*) If a person makes a statement in a verification in any return of gifts furnished under this Act or in a verification mentioned in section 22, 23 or 25 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall on conviction before a magistrate, be punishable with simple imprisonment which may extend to one year, or with fine which may extend to rupees one thousand, or with both.

(*3*) A person shall not be proceeded against for an offence under this section except at the instance of the Commissioner.

(*4*) The Commissioner may either before or after the institution of proceedings compound any such offence.

Explanation.—For the purposes of this section "magistrate" means a presidency magistrate, a magistrate of the first class or a magistrate of the second class specially empowered by the Central Government to try offences under this Act.

Power to take evidence on oath, etc.

36. The Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:— 5 of 1908.

(*a*) enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavit,

(*d*) issuing commissions for the examination of witnesses;

and any proceeding before the Gift-tax Officer, the Appellate Assistant Commissioner, the Commissioner or the Appellate Tribunal shall

be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

45 of 1860.

Power to call for information.

37. Where, for the purposes of determining the gift-tax payable by any person, it appears necessary for the Gift-tax Officer to obtain any statement or information from any person, the Gift-tax Officer may serve a notice requiring such person, on or before a date to be therein specified, to furnish such statement or information on the points specified in the notice, and that person shall, notwithstanding anything in any law to the contrary, be bound to furnish such statement or information to the Gift-tax Officer:

Provided that no legal practitioner shall be bound to furnish any statement or information under this section based on any professional communications made to him otherwise than as permitted by section 126 of the Indian Evidence Act, 1872.

1 of 1872.

Effect of transfer of authorities on pending proceedings.

38. Whenever in respect of any proceeding under this Act any Gift-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Computation of period of limitation.

39. In computing the period of limitation, prescribed for an appeal under this Act or for an application under section 26, the day on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

Service of notice.

40. (1) A notice or a requisition under this Act may be served on the person therein named either by post or as if it were summons issued by a court under the Code of Civil Procedure, 1908.

5 of 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family be addressed to any member of the firm or to the manager or any adult male member of the family, and in the case of a company or association of persons be addressed to the principal officer thereof.

Prohibition of disclosure of information.

41. (1) Subject to the provisions contained in sub-section (2), the provisions of section 54 of the Income-tax Act shall apply to all accounts or in relation to statements, documents, evidence or affidavits given, produced or obtained in connection with or in the course of any proceeding under this Act as they apply to or in relation to similar particulars under that Act subject to the modification that

the reference to any "Income-tax authority" in clause (*d*) of sub-section (*3*) and to the "Commissioner" in sub-section (5) of section 54 of that Act shall be construed as a reference to any "Gift-tax, authority" and to the "Commissioner of Gift-tax", respectively.

(*2*) Nothing contained in section 54 of the Income-tax Act shall apply to the disclosure of any such particulars as are referred to in sub-section (1) to any person acting in the execution of this Act or the Income-tax Act, or the Estate Duty Act, 1953, or the Wealth-tax Act, 1957, or the Expenditure-tax Act, 1957, where it is necessary or desirable to disclose the same to him for the purposes of this Act or any of the other Acts aforesaid.

34 of 1953.
27 of 1957.
29 of 1957.

Bar of suits in civil court.

24. No suit shall lie in any civil court to set aside or modify any assessment made under this Act, and no prosecution, suit or other legal proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

Appearance before Gift tax authorities by authorised representatives.

43. Any assessee who is entitled to or required to attend before any Gift-tax authority or the Appellate Tribunal in connection with any proceeding or inquiry under this Act, except where he is required under this Act, to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of, or a person regularly employed by, the assessee or a legal practitioner or a chartered accountant or any other person having such qualifications as may be prescribed.

Explanation.—For the purposes of this section,—

(*a*) the expression "a person regularly employed by the assessee" includes any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;

(*b*) "chartered accountant" means a chartered accountant as defined in the Chartered Accountants Act, 1949.

38 of 1949.

Agreement for avoidance or relief of double taxation with respect to gift-tax.

44. The Central Government may enter into any agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to gift-tax payable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.—The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

Act not to apply in certain cases.

45. The provisions of this Act shall not apply to gifts made by—

1 of 1956. (a) a Government company as defined in section 617 of the Companies Act, 1956;

(b) a corporation established by a Central, State or Provincial Act;

(c) any company, if the Gift-tax officer is satisfied that the donee is not a director, secretary and treasurer or managing agent of the company or a shareholder holding shares in the company carrying more than ten per cent of the total voting power or is not a relative of any of the persons aforesaid by blood or adoption:

Explanation.—For the purposes of this clause, the expression "meaning agent" in the case of a company or a firm includes the director, share-holders holding shares in the managing agency company carrying more than ten per cent of the total voting power or, as the case may be, partners of the firm and any person who is a relative of any of the persons aforesaid by blood or adoption.

(d) any institution or fund the income whereof is exempt from income-tax under clause (i) of sub-section (3) of section 4 of the Income-tax ***

Power to make rules.

46 (1) The Board may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(a) the manner in which the* value of any property may be determined;

(b) the form in which returns under this Act shall be made and the manner in which they shall be verified;

(c) the form in which appeals and applications under this Act may be made, and the manner in which they shall be verified;

(d) the form of any notice of demand under this Act;

(e) the refunds of gift-tax paid in respect of gifts which are revoked on the happening of any specified event which does not depend on the will of the donor or of any amount paid under section 18;

(*f*) the areas for which lists of valuers may be drawn up;

(*g*) any other matter which has to be, or may be, prescribed for the purposes of this Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act.

(4) All rules made under this Act shall be laid before each House of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

THE SCHEDULE

(*See section 3*)

RATES OF GIFT-TAX

		Rate of gift tax
(1)	On the first Rs. 50,000 of the value of all taxable gifts	4%
(2)	On the next Rs. 50,000 of the value of all taxable gifts	6%
(3)	On the next Rs. 50,000 of the value of all taxable gifts	8%
(4)	On the next Rs. 50,000 of the value of all taxable gifts	10%
(5)	On the next Rs. 1,00,000 of the value of all taxable gifts	12%
(6)	On the next Rs. 2,00,000 of the value of all taxable gifts	15%
(7)	On the next Rs. 5,00,000 of the value of all taxable gifts	20%
(8)	On the next Rs. 10,00,000 of the value of all taxable gifts	25%
(9)	On the next Rs. 10,00,000 of the value of all taxable gifts	30%
(10)	On the next Rs. 20,00,000 of the value of all taxable gifts	35%
(11)	On the balance of the value of all taxable gifts	40%

M. N. KAUL,
Secretary.

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